

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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KEVIN D. SUTTON,

Case No. 3:18-cv-00598-MMD-CBC

Petitioner,

## ORDER

V.

RENEE BAKER, *et al.*,

## Respondents.

14 This pro se habeas matter pursuant to 28 U.S.C. § 2254 comes before the Court  
15 for consideration of Petitioner's application for leave to proceed *in forma pauperis* (ECF  
16 No. 1)<sup>1</sup> and for review following the Court's order to show cause.

17 The Court finds that Petitioner is unable to pay the filing fee. The application for  
18 leave to proceed *in forma pauperis* will therefore be granted.

19 On January 4, 2019, the Court ordered Petitioner to show cause why the petition  
20 should not be dismissed as second or successive given that Petitioner had previously  
21 challenged the same judgment of conviction in a federal habeas petition that was decided  
22 on the merits. (ECF No. 3; Case No. 3:04-cv-00498-HDM.) Petitioner’s response to the  
23 order to show cause is not persuasive. As the Court previously explained, second or  
24 successive petitions may not be filed absent authorization from the Court of Appeals, and  
25 the district court lacks jurisdiction to consider such petitions absent such authorization.  
26 28 U.S.C. § 2244(b)(3): e.g., *Burton v. Stewart*, 549 U.S. 147, 149 & 152-53 (2007). That

27       <sup>1</sup>Petitioner's financial certificate was filed a few weeks after he initiated this action  
28 and is located at ECF No. 5.

1 Petitioner believes he did not previously have available the claim he now makes does not  
2 change this result, as he must still obtain authorization from the Court of Appeals to  
3 pursue his claim. Petitioner does not indicate that he has sought or received any such  
4 permission. Accordingly, as the petition is second or successive, it must be dismissed for  
5 lack of jurisdiction.

6 It is therefore ordered that the application for leave to proceed *in forma pauperis*  
7 (ECF No. 1) is granted. Petitioner will not be required to pay the filing fee.

8 It is further ordered that this action is dismissed for lack of jurisdiction as a second  
9 or successive petition.

10 It is further ordered that Petitioner is denied a certificate of appealability, as jurists  
11 of reason would not find the Court's dismissal of the petition as second or successive to  
12 be debatable or wrong.

13 The Clerk of Court is directed to enter final judgment accordingly and close this  
14 case.

15 DATED THIS 29<sup>th</sup> day of January 2019.



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17 MIRANDA M. DU  
18 UNITED STATES DISTRICT JUDGE  
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